

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JULIAN RODRIGUEZ,

Plaintiff,

v.

R. EULERS, et al.,

Defendants.

No. 2:20-cv-2399-EFB P

ORDER

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, seeks leave to proceed in forma pauperis. ECF No. 2. He also requests appointment of a Spanish-speaking interpreter and/or attorney. ECF No. 4. As discussed below, his in forma pauperis application is granted and the court screens the complaint. The request for appointment of an attorney/interpreter is denied.

Application to Proceed in Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

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Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)). While the complaint must comply with the “short and plain statement” requirements of Rule 8, its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at 678.

Furthermore, a claim upon which the court can grant relief must have facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

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Screening Order

Plaintiff's complaint identifies two defendants: R. Eulers and E. Corter. The factual allegations, however, reference only a single unnamed "defendant," making it impossible to determine which of the two defendants allegedly violated plaintiff's rights. Plaintiff will be given leave to amend to cure this defect. In any amended complaint, plaintiff must identify by name each defendant who allegedly violated his rights and state what conduct each engaged in that constitutes such a violation.

The gist of the complaint is that "defendant" has retaliated against plaintiff by falsifying a rules violation report, using unnecessary force, and identifying plaintiff as a rapist in the presence of other inmates.¹ Plaintiff alleges that defendant took these adverse actions against him because (1) plaintiff likes to insult defendant with names like "coward," "corrupt pig," and "punk ass bitch," and (2) plaintiff files administrative appeals. While the First Amendment protects inmates from being retaliated against for protected conduct such as filing administrative appeals, it does not offer protection for hurling insults at correctional officers. *See Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012); *Young v. Moreno*, No. CV 10-9699-JST (SH), 2012 U.S. Dist. LEXIS 70572, at *14-16 n.6 (May 8, 2012, C.D. Cal.). Moreover, mere conclusions of hypothetical retaliation are insufficient, a prisoner must "allege specific facts showing retaliation because of the exercise of the prisoner's constitutional rights." *Frazier v. Dubois*, 922 F.2d 560, 562 (n.1) (10th Cir. 1990). Thus, this defect, too, must be cured by an amended complaint. In any amended complaint, plaintiff must, for each alleged instance of retaliation, identify his protected conduct and show that defendant took adverse action against him because of that protected conduct.

Leave to Amend

Plaintiff's complaint is dismissed with leave to amend. If plaintiff chooses to file an amended complaint it should observe the following:

¹ In an amended complaint that clearly identifies each defendant, these allegations may be used to support independent Eighth Amendment claims of excessive force and/or deliberate indifference to plaintiff's safety.

Any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). The complaint should also describe, in sufficient detail, how each defendant personally violated or participated in the violation of his rights. The court will not infer the existence of allegations that have not been explicitly set forth in the amended complaint.

The amended complaint must contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Any amended complaint must be written or typed so that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. See *Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).

Finally, the court notes that any amended complaint should be as concise as possible in fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual background which has no bearing on his legal claims.

Request for Counsel

Plaintiff requests a Spanish-speaking interpreter or attorney. ECF No. 4.

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v.*

1 *Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional
2 circumstances” exist, the court must consider the likelihood of success on the merits as well as the
3 ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues
4 involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors,
5 the court finds there are no exceptional circumstances in this case.


6 Plaintiff has also requested the assistance of a Spanish language interpreter, as plaintiff’s
7 primary language is not English. Thus far, plaintiff’s pleadings have been in English and he has
8 succeeded in effectively communicating with the court. Moreover, the court is not aware of any
9 authority authorizing the expenditure of public funds for a court-appointed interpreter in a civil
10 action. *See Gonzalez v. Bopari*, No. 1:12-cv-01053-LJO-GBC, 2012 U.S. Dist. LEXIS 178295
11 (E.D. Cal. Dec. 17, 2012) (discussing lack of statutory authority for court to appoint interpreters
12 in civil in forma pauperis actions).

13 Conclusion

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 16 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
17 accordance with the notice to the California Department of Corrections and
18 Rehabilitation filed concurrently herewith;
- 19 3. Plaintiff’s request for a Spanish-speaking attorney and/or interpreter (ECF No. 4) is
20 DENIED;
- 21 4. Plaintiff’s complaint (ECF No. 1) is DISMISSED with leave to amend within 30 days
22 from the date of service of this order; and
- 23 5. Failure to comply with this order may result in dismissal of this action for the reasons
24 stated herein.

25 DATED: December 16, 2020.

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EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE
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